

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

In re:	X	
	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC., <u>et al.</u> ,	:	Case No. 08-35653-KRH
	:	
Debtors.	:	Jointly Administered
	:	
	X	

**KITE CORAL SPRINGS, LLC'S RESPONSE TO LIQUIDATING TRUST'S TWENTY-FIRST OMNIBUS OBJECTION TO LANDLORD CLAIMS**

Kite Coral Springs, LLC (the "Claimant"), by counsel, hereby submits this response (the "Response") to the *Liquidating Trust's Twenty-First Omnibus Objection to Landlord Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claims, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims, and Disallowance of Certain Amended Claims)* [Docket No. 10073] (the "Objection"), and states as follows:

**Background**

1. On November 10, 2008 (the "Petition Date"), Circuit City Stores, Inc.; Circuit City Stores West Coast, Inc.; InterTAN, Inc.; Ventoux International, Inc.; Circuit City Purchasing Company, LLC; CC Aviation, LLC; CC Distribution Company of Virginia, Inc.; Patapsco Designs, Inc.; Sky Venture Corp.; XSStuff, LLC; and PRAHS, INC. (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the

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United States Bankruptcy Court for the Eastern District of Virginia, Richmond, Virginia (the "Court").

2. On April 30, 2009, the Claimant timely filed its general unsecured proof of claim against Circuit City Stores, Inc. in the amount \$2,028,604.06 [Claim Number 12873].

3. On September 10, 2010, the Court confirmed the *Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and its Official Committee of Creditors Holding General Unsecured Claims* (the "Plan"). Pursuant to the Plan, the Circuit City Stores, Inc. Liquidating Trust (the "Liquidating Trust") assumed the right and responsibility to liquidate the Debtor's remaining assets, including the prosecution of causes of action and objections to claims.

4. By the Liquidating Trust's Objection, the Liquidating Trust seeks to reduce portions of the Claimant's general unsecured claim without any explanation or substantiation. *See* Objection, Exh. C.<sup>1</sup>

**The Liquidating Trust Fails to Specify the Basis for Reducing the Claimant's Claim**

5. The Court should deny the Objection as it relates to Claimant's claim because the Objection fails to meet the substantive requirements set forth in Rules 3001(f) and 3007(d) of the Federal Rules of Bankruptcy Procedure.

6. A filed proof of claim constitutes prima facie evidence of the claim's validity and amount. *See* Fed. R. Bankr. P. 3001(f); *see also In re Mid-Am. Waste Sys., Inc.*, 284 B.R. 53, 65 (Bankr. D. Del. 2002) ("A claimant filing a proof of claim must allege facts sufficient to support a legal basis for the claim. If the assertions in the filed claim meet this standard of sufficiency, the claim is prima facie valid pursuant to Fed. R. Bankr. P. 3001(f).").

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<sup>1</sup> The Objection also seeks to reclassify the claim from an administrative expense to a general unsecured claim. The Claimant's proof of claim did not assert an administrative expense; therefore, reclassification is unnecessary.

7. A party objecting to a filed proof of claim bears the burden of presenting "enough evidence to overcome the prima facie effect of the claim." *McGee v. O'Connor (In re O'Connor)*, 153 F.3d 258, 260 (5<sup>th</sup> Cir. 1998); *In re Mid-Am. Waste Sys., Inc.*, 284 B.R. at 65 (objecting party must present "sufficient evidence to overcome the presumed validity and amount of the claim"). The objector must "produce evidence tending to defeat the claim that is of a probative force equal to that of the creditor's proof of claim." *See In re Simmons*, 765 F.2d 547, 552 (5<sup>th</sup> Cir. 1985); *In re Alleghany Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992) (objector must present evidence that is "equal in force" to the prima facie evidence supporting the claim).

8. The Objection merely seeks to reduce certain portions the Claimant's claim "according to the Debtors' books and records." *See* Objection, Exh. C.

9. The Claimant's proof of claim contains an itemization of the amounts owed by the Debtor with supporting documentation detailing the calculations made by the Claimant in arriving at the total claim amount.

10. The Liquidating Trust has failed to meet its burden of presenting "enough evidence" to overcome the presumptive validity of the Claimant's claim under Rule 3001(f) of the Federal Rules of Bankruptcy Procedure.

WHEREFORE, the Claimant, Kite Coral Springs, LLC, respectfully requests that the Court deny the Objection as it relates to the Claimant's claim, deem the Claimant's general unsecured claim against the Debtors to be allowed in the amount of \$2,028,604.06, and grant all other relief just and proper in the premises.

Dated: April 7, 2011

**CHRISTIAN & BARTON, LLP**

/s/ Jennifer M. McLemore

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2011, I caused a true and correct copy of the foregoing Response to be electronically filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the CM/ECF system who have filed a notice of appearance in this matter.

/s/ Jennifer M. McLemore

Jennifer M. McLemore